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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,928	12/31/2001	James M. Doherty	T00362	5904

26381 7590 10/26/2006
LACASSE & ASSOCIATES, LLC
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EXAMINER

LESNIEWSKI, VICTOR D

ART UNIT PAPER NUMBER

2152

DATE MAILED: 10/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/029,928	Applicant(s) DOHERTY, JAMES M.	
	Examiner Victor Lesniewski	Art Unit 2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amendment filed 8/16/2006 has been placed of record in the file.
2. Claims 32 and 39 have been amended.
3. The rejection of claims 32 and 39 under 35 U.S.C. 112 is withdrawn in view of the amendment.
4. Claims 29-43 are now pending.
5. The applicant's arguments with respect to claims 29-43 have been fully considered but they are not persuasive. A detailed discussion is set forth below.

Response to Amendment

6. Claims 32 and 39 have been amended to correct issues relating to a lack of antecedent basis in the claims. The amendment does not prove a change in scope to the limitations of claims 32 and 39 as related to the prior art rejection.

Claim Rejections - 35 USC § 103

7. Claims 29-43 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Petite et al. (U.S. Patent Number 6,437,692), hereinafter referred to as Petite, in view of Mecham et al. (U.S. Patent Number 6,314,340), hereinafter referred to as Mecham, as presented in the previous action dated 5/19/2006.

Response to Arguments

8. In the remarks, the applicant has argued:

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- <Argument 1>

The combination of Petite and Mecham does not disclose the features of claim 29 because it does not disclose “forwarding economic setpoint information to said control server over said WAN” as recited in claim 29.

- <Argument 2>

The combination of Petite and Mecham does not disclose the features of claim 29 because it does not disclose “relevant control information accessed from one or more climatic information providing servers on said WAN” as recited in claim 29.

- <Argument 3>

The combination of Petite and Mecham does not disclose the features of claim 29 because it does not disclose “said forwarded economic setpoint information” as recited in claim 29.

9. In response to argument 1, the combination of Petite and Mecham does disclose forwarding economic setpoint information as recited in claim 29. Petite’s water application control schedule meets the limitation of economic setpoint information since the schedule clearly sets times for water application as well as amounts of water required. The applicant’s statement that the control schedule needs to be “based on economic/financial parameters which would keep the cost of the water/electricity usage of an irrigation system low” is not persuasive as this is not a limitation of the claims. The applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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10. In response to argument 2, the combination of Petite and Mecham does disclose relevant control information accessed from one or more climatic information providing servers as recited in claim 29. The previous line citation to Petite, column 6, lines 15-30, clearly shows the functionality of receiving control parameters from a control server over the WAN. Petite utilizes forwarded state information and setpoint information (as previously cited), but does not explicitly state information from a climatic information providing server. However, it would have been obvious to also use information from a climatic information providing server as Mecham teaches that this was well known in the art. The applicant's statement that Mecham does not disclose "determining control parameters by control server to control residential devices via a residential gateway (over a WAN) based on the climatic information" is not persuasive as the rejection is based on the combination of Petite and Mecham. Here the applicant is reminded that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

11. In response to argument 3, the combination of Petite and Mecham does disclose forwarded economic setpoint information as recited in claim 29. The applicant is directed to the response to argument 1 above for a discussion of economic setpoint information.

12. In addition, the applicant has argued that claims rejected under 35 U.S.C. 103, but not explicitly discussed, are allowable based on the above arguments. Thus, claims disclosing similar limitations to the discussed claims and related dependent claims remain rejected under the same reasoning as presented above.

Conclusion

13. **THIS ACTION IS MADE FINAL.** The applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Lesniewski whose telephone number is 571-272-3987.

The examiner can normally be reached on Monday through Thursday.

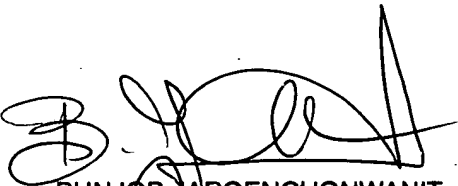
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Victor Lesniewski
Patent Examiner
Group Art Unit 2152



BUNJOB JAROENCHONWANIT
SUPERVISORY PATENT EXAMINER